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**DEC 21 1993**

December 20, 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal Communications Commission  
Office of the Secretary  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

On December 10, 1993, Coopers & Lybrand filed comments on Docket No. 93-251 in the Matter of Amendment of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates. However, due to an administrative oversight, the docket number was not listed on the filing.

Attached to this letter we are resubmitting the same filing that was made on December 10, 1993 with the sole difference that the filing now includes the docket number.

Please accept this resubmission and include it with all other filings on this matter.

Respectfully submitted,

*Coopers & Lybrand*

COOPERS & LYBRAND

by John W. Putnam, Partner  
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DEC 21 1993

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
Amendment of Parts 32 )  
and 64 of the Commission's )  
Rules to Account for )  
Transactions Between Carriers )  
and Their Nonregulated Affiliates )

CC Docket No. 93-251

Comments of Coopers & Lybrand

Coopers & Lybrand, pursuant to the Notice of Proposed Rulemaking (NPRM) released October 20, 1993, hereby submits its comments on certain issues associated with the proposed procedures for valuing transactions between carriers and their nonregulated affiliates.

Coopers & Lybrand is a firm of certified public accountants that audits the FCC ARMIS 43-03 Joint Cost Reports of a substantial number of Tier 1 carriers as prescribed by rules of the Federal Communications Commission. In our capacity as auditors of the FCC ARMIS 43-03 Joint Cost Reports, we are well positioned to be knowledgeable of and sensitive to the implications that changes in the affiliate transaction rules have on the audit and enforcement process. We are restricting our comments to the audit implications of the proposed changes in affiliate transaction rules.

Current FCC Rules require that services performed for affiliates be priced at tariff if the service is tariffed; at prevailing price if the service is sold to substantial market of unrelated parties; and if neither of the two previous conditions apply, at fully distributed cost. The Notice of Proposed Rulemaking proposes to change the fully distributed cost "residual rule" as follows:

For services provided by the regulated carrier:  
the greater of market value or fully distributed cost.

For services provided to the regulated carrier:  
the lesser of market value or fully distributed cost.

The adoption of this proposed change will add substantial difficulty to the Carrier's affiliate transaction process and complexity and subjectivity to the audit process thereby diminishing the enforcement mechanism that the FCC currently has in place.

## **The FCC's Current Rules Achieve its Stated Objectives Better than its Proposed Rules**

The FCC's goal of having objective, auditable rules, which has been accomplished up to now, would be substantially eroded with the adoption of the proposed rules.

The FCC's 86-111 Order on Reconsideration describes that its current rules were the result of its need to have rules and methodologies that are readily verifiable, simple to audit and did not require subjective judgment.

118. *Expanded definition of market value.* As it is currently written, the affiliate transaction rule requires that in the first instance, transfers should occur at the "fair market value", which is defined as either the tariff price or the amount listed on a generally-available price list. If neither of these valuation mechanisms is available, the residual rule applies. If we were to expand here the definition of "fair market value" beyond the tariff rate or price list to include alternative valuation mechanisms, we would greatly expand the complexity of auditing affiliate transactions. Although we have permitted a wide range of criteria of fair market value to be used under the residual rule, we expect that the residual rule will be employed only in a limited number of cases, and that most transactions will be completed using the tariff price or price list. These two valuation mechanisms, unlike the various methodologies proposed by petitioners, are readily verifiable and simple to audit. No subjective judgment need be brought to bear on the question of whether the asset was sold at its tariff or listed price. In keeping with this determination, we will continue to require carriers to file waiver requests should they seek to use a valuation method that is inconsistent with our rules.

131. Several parties have argued that if a tariff or prevailing price is unavailable as a measure of value, we should look to the value of similar services in the marketplace. We believe that such a valuation standard is fraught with the potential for abuse, and would be difficult to monitor. In contrast, by requiring carriers and their affiliates to allocate costs pursuant to the cost allocation standards, we can ensure that an auditable measure of the cost of the service is available. (emphasis added) Joint Cost Reconsideration Order, 2FCC Rcd 6283 (1987).

There have been no developments since the issuance of the Reconsideration Order that would make these determinations any less complex or subjective.

In practice, there have been very few asset transfers subject to the estimated fair value requirements of the current rules. The assets, by their nature, have been subject to reasonable market value estimating processes.

The companies have a much greater number of service transactions very specifically designed to needs of the company acquiring the services and the existing delivery mechanisms of the company that sells the services. The problems with the proposed estimated market value methods are:

- The difficulty in identifying comparable transactions in the market and the inherent subjectivity of estimated fair value estimates.

Standard market appraisal practices call for the identification of multiple comparable transactions and applying inherently subjective adjustments to account for the fact the comparable transactions are not identical to the subject transaction. The types of adjustments would include:

- Term of contract
- Service availability
- Payment mechanism
- Knowledge and attentiveness of service provider
- Compatibility of delivery systems

An example of applying this rule can be illustrative:

Example: An affiliate loans an engineer to another affiliate for a two-week project.

Under existing rules, this transaction could be valued using fully distributed cost. Under the proposed rules, the company would also have to determine the market value of the service.

This simple transaction raises a whole series of relevant market valuation questions:

What is the market value of the job that will be performed? Is this job performed in similar businesses or other industries?

What is the level of required knowledge, background, and required familiarity with systems, practices documentation?

How does the short duration of the "job" affect market valuation?

Are there any comparables where individuals perform a short term job without leaving their long term employer and without change in their compensation and benefits?

These complexities and subjective judgments will be multiplied on service transactions that are inherently more complex.

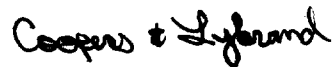
- The large volume of service transactions that would be subject to the estimated fair value process.

It is likely that under the proposed rules that hundreds of services or service elements currently provided at fully distributed cost would be subject to market valuations. Each of those market valuations would involve numerous subjective judgments and adjustments.

In summary, the Reconsideration Order described very important and appropriate criteria that the Commission considered in establishing its affiliate transaction rules: objective rules that are verifiable and easy to monitor and audit. The proposed rules move away from those criteria, create a complete new layer of work to value services, make it far more difficult for companies to determine whether they are in compliance with rules, add complexity and subjectivity to the audit process and render the company and auditor conclusions subject to continued debate because the market valuation of services adds substantial subjectivity to the rules.

We recommend that the Commission eliminate from its proposed rules provisions that utilize market value analysis of affiliate service transactions.

Respectfully submitted,



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December 9, 1993